

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 48087

STATE OF IDAHO,)
)
) **Filed: January 19, 2021**
)
) **Melanie Gagnepain, Clerk**
)
) **THIS IS AN UNPUBLISHED**
) **OPINION AND SHALL NOT**
) **BE CITED AS AUTHORITY**
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)

Appeal from the District Court of the Second Judicial District, State of Idaho, Latah County. Hon. John C. Judge, District Judge.

Order denying motion for credit for time served, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; Sally J. Cooley, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Kacey L. Jones, Deputy Attorney General, Boise, for respondent.

Before GRATTON, Judge; LORELLO, Judge;
and BRAILSFORD, Judge

PER CURIAM

Angela Juanita Walker pled guilty to felony aggravated battery. The district court sentenced Walker to a unified term of five years with two years determinate, and retained jurisdiction. Following the period of retained jurisdiction, the district court placed Walker on probation. Walker admitted to violating the terms of her probation and the district court revoked Walker’s probation, imposed the underlying sentence, and again retained jurisdiction. Following the second term of retained jurisdiction, the district court suspended Walker’s sentence and again placed her on probation.

Through the Interstate Compact, Walker transferred her supervision to Montana. While in Montana, Walker again violated the terms of her probation. The district court revoked

Walker's probation and imposed the underlying sentence. In its order, the district court credited Walker with 591 days for time served. Walker filed an Idaho Criminal Rule 35 motion requesting credit for time she successfully completed on probation. The district court denied Walker's motion. Walker appeals, contending that the district court erred when it denied her motion.

The awarding of credit for time served is governed by Idaho Code § 18-309. The language of I.C. § 18-309 is mandatory and requires that, in sentencing a criminal defendant or when hearing an Idaho Criminal Rule 35(c) motion for credit for time served, the court give the appropriate credit for pre-judgment incarceration. *State v. Moore*, 156 Idaho 17, 20-21, 319 P.3d 501, 504-05 (Ct. App. 2014). This means that the defendant is entitled to credit for all time spent incarcerated before judgment. *Id.* at 21, 319 P.3d at 505. The converse is also true--that the defendant is not entitled to credit under I.C. § 18-309 for any time not actually spent incarcerated before judgment. *Id.*; *see also State v. Hernandez*, 120 Idaho 785, 792, 820 P.2d 380, 387 (Ct. App. 1991) (stating that I.C. § 18-309 does not allow the defendant to receive credit for more time than he or she has actually been in confinement). Accordingly, a district court may only give credit for the correct amount of time actually served by the defendant prior to imposition of judgment in the case; the district court does not have discretion to award credit for time served that is either more or less than that. *Moore*, 156 Idaho at 21, 319 P.3d at 505. Thus, the defendant is entitled to credit for time actually served prior to entry of judgment in the case. *Id.*

The district court did not err in denying Walker's motion for credit for time served. Walker is not entitled to credit for time served while on probation. I.C. § 18-309. Therefore, the district court's order denying Walker's motion for credit for time served is affirmed.